



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,665	06/23/2000	Caroline Barry	G-067US03REG	8150

23557 7590 02/17/2004

SALIWANCHIK LLOYD & SALIWANCHIK  
A PROFESSIONAL ASSOCIATION  
2421 N.W. 41ST STREET  
SUITE A-1  
GAINESVILLE, FL 326066669

EXAMINER
----------

CHUNDURU, SURYAPRABHA

ART UNIT	PAPER NUMBER
----------	--------------

1637

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/603,665

Applicant(s)

BARRY ET AL.

Examiner

Suryaprabha Chunduru

Art Unit

1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 79-129 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 80,85,86,99-102,104,105,121,126 and 127 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Applicants' response to the office action filed on September 3, 2003 has been entered and considered.
2. The instant application is filed on June 23, 2000, which claims priority to provisional applications 60/141,323 filed on June 25, 1999 and 60/176,880 filed on January 18, 2000.
3. Claims 79-126 are pending.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 80, 85, 86, 99-102, 104-105, 121, 126-127 are rejected under 35 U.S.C. 102(b) as being anticipated by Bowcock et al. (WO 98/12327) ('327).

The following rejection is based on the variant at position 2050 of SEQ ID No. 5, which is identical with alanine at position 421 of SEQ ID No. 52 of '327.

Bowcock et al. teach an isolated polypeptide according to claims 80, 85-86, 99 and 127 comprising a contiguous span of 10 amino acids said contiguous span of amino acids comprises an alanine at position 2050 of SEQ ID No. 5 (see pages 287-288, 348, SEQ ID NO. 52, and sequence alignment, the alanine at position 2050 of SEQ ID No. 5 corresponds to alanine of SEQ ID No. 52 of '327 at position 421).

With regard to claims 100-102, Bowcock et al. also teach that the polypeptide comprises at least 100 amino acids in length (see pages 287-288, SEQ ID NO. 52).

With regard to claim claims 104-105, Bowcock et al. teach that the polypeptide is a recombinant polypeptide and the composition comprising polypeptide further comprises a physiologically acceptable carrier (see page 129, lines 8-22);

With regard to claims 121, and 126, Bowcock et al teach an antibody that selectively binds to the polypeptide, which comprises an epitope-containing fragment comprising alanine at position 2050 of SEQ ID No. 5 (see page 104, lines 4-30). Thus the disclosure of Bowcock et al. meets the limitations in the instant claims.

#### **Response to arguments**

4. Applicants' response to the office action is fully considered and found persuasive.
5. With reference to the objection made in the previous office action under 35 USC 112, applicants' amendment is fully considered and the objection is withdrawn in view of the amendment.
6. With reference to the rejection made in the previous office action under 35 USC 112, second paragraph applicants' arguments are fully considered and the rejection is withdrawn in view of the amendment.
7. With reference to the rejections made in the previous office action under 35 USC 102 (b) and 102(e), applicants' arguments are fully considered and the rejection is withdrawn in view of the amendment reciting at least 10 amino acids and the position of amino acid in SEQ ID No. 5.

#### **Conclusion**

Claims are 79, 81-84, 87-98, 103, 106-120, 122-125 are free of art.

Any inquiry concerning this communication or earlier communications from the


Art Unit: 1637

examiner should be directed to Suryaprabha Chunduru whose telephone number is 571-272-0783. The examiner can normally be reached on 8.30A.M. - 4.30P.M, Mon - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and - for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

<sup>802</sup>  
Suryaprabha Chunduru  
January 31, 2004



JEFFREY FREDMAN  
PRIMARY EXAMINER